

SIMTEK6218

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Kenji, Nagai
App. No.: 09/682642
Filed: October 1, 2001
Conf. No.: 3686
Title: **STARTER MOTOR FOR
INTERNAL COMBUSTION
ENGINES**
Examiner: D. Le
Art Unit: 2834

I hereby certify that this correspondence and all
identified attachments are being deposited with
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August 2, 2003

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REQUEST FOR SUPPLEMENTAL OFFICE ACTION

Dear Sir:

The Examiner is requested to prepare a supplemental Office Action to that dated July 30, 2003, acting on claims 23-30, which the Examiner has incorrectly asserted are directed to a different invention from that allegedly elected. The facts are not as stated in the Office Action dated July 30, 2003. The Office Action dated May 14, 2003, required an election of species listing three alleged species. That action did not, as the MPEP requires an indication of the figures of the drawings showing the alleged species. However that indicated as the second group II, were directed to a method while all remaining claims were directed to an apparatus. In order to be as responsive as possible to what is believed to be an improper election requirement, applicant elected the article claims of the first group II.

It is not believed to be proper to require election between claims that read on the same figures as these are not separate species. In any event, applicant has not received an Office Action on all claims elected prior to the outstanding Office Action and thus has not made an election implicitly.

The Examiner should have called applicant's attorney if he wished to make a restriction requirement rather than an election requirement. Also it is believed proper to add linking claims as claims 23-30 and action on those claims or the issuance of a proper restriction requirement should be made as applicant responded to a species requirement not a restriction requirement.

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As a final point, dependent claims frequently may be classified in different subclasses in the same class and rarely is restriction required. Also it is submitted that it is not fair to say that an action not previously made (restriction) can be made final in the very Office Action that now for the first time uses "restriction" rather than the previously expressed "election of species"

Respectfully submitted,



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